

STATE OF TENNESSEE

Office of the Attorney General



**LUCY HONEY HAYNES**  
CHIEF DEPUTY ATTORNEY GENERAL

**LAWRENCE HARRINGTON**  
CHIEF POLICY DEPUTY

**ROBERT E. COOPER, JR.**  
ATTORNEY GENERAL AND REPORTER  
CORDELL HULL AND JOHN SEVIER STATE  
OFFICE BUILDINGS

MAILING ADDRESS  
P.O. BOX 20207  
NASHVILLE, TN 37202

**MICHAEL E. MOORE**  
SOLICITOR GENERAL

TELEPHONE (615) 741-3491  
FACSIMILE (615) 741-2009

March 3, 2010

Mr. Gary Hotvedt, Hearing Officer  
Tennessee Regulatory Authority  
460 James Robertson Pkwy.  
Nashville, TN 37238

filed electronically in docket office on 03/03/10

Re: TRA Docket No. 09-00183, Chattanooga Gas Company –  
Expert Availability for Testimony

Dear Hearing Officer Hotvedt,

This letter is in response to the March 1, 2010 letter that Ms. Brundige sent to you regarding the problems with the availability of Dr. Morin, Chattanooga Gas Company's ("CGC") cost of capital expert. After receiving the letter I contacted Ms. Brundige and attempted to reach an agreement on how best to proceed. While we were able to agree on some aspects, we could not agree to all of the requests made in her letter.

The Consumer Advocate is certainly sympathetic to CGC's position because of Dr. Morin's unavailability. Therefore the Consumer Advocate is happy to accommodate CGC with the taking of Dr. Morin's testimony on Friday, April 9, 2010 and will also use our best efforts to accommodate that testimony on another date if April 9 is not convenient for the Authority. However, the Consumer Advocate cannot agree to the other conditions and restrictions suggested by counsel for CGC.

Specifically, the Consumer Advocate cannot agree to arbitrarily disrupt its presentation to the Authority by forcing the testimony of its cost of capital witness out of order and before any other testimony by CGC. The Consumer Advocate's cost of capital witness will be present and available to testify on the days that the Hearing is currently scheduled. CGC makes no attempt to provide any justification for requiring the Consumer Advocate's to testify out of order on April 9th. The Consumer Advocate is entitled to put on its case in normal order absent some compelling reason to the contrary. CGC's need to move its cost of capital witness to "the front of the line" does not provide any reason, compelling or otherwise, to require the Consumer Advocate to also put on its cost of capital witness out of order. Ms. Brundige would not agree to

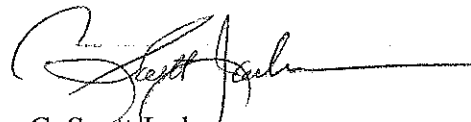
take the testimony of Dr. Morin early without also requiring the Consumer Advocate's cost of capital witness to testify on the same date.

The other issue we could not agree upon is the date for filing rebuttal testimony by Dr. Morin. The current Procedural Schedule requires the filing of rebuttal testimony by CGC's witnesses on April 5, which is 7 days before the scheduled Hearing Date. By moving Dr. Morin's testimony forward until April 9<sup>th</sup>, that consequently shortens the time to a mere 4 days that the Consumer Advocate will have to review Dr. Morin's rebuttal testimony and prepare for his cross-examination. Therefore, the Consumer Advocate asked that CGC provide Dr. Morin's rebuttal testimony (and only Dr. Morin's testimony) one business day early or on Thursday, April 1 (Friday, April 2 is a State Holiday and the TRA will not be open to receive the testimony that day). Ms. Brundige would not agree to provide Dr. Morin's rebuttal testimony before the regularly scheduled date. This results in a substantial limitation on the Consumer Advocate's ability to prepare for cross-examination of this witness.

In summary, the Consumer Advocate understands that the recent changes in the Scheduling Order have put CGC in an uncomfortable position. In order to accommodate CGC, the Consumer Advocate readily agrees to take Dr. Morin's testimony on April 9 and will do everything it can to accommodate another date if April 9<sup>th</sup> is not convenient for the Authority. However, the Consumer Advocate cannot agree to allow CGC's problem to result in a prejudice to the Consumer Advocate's ability to present its case and arguments on behalf of Tennessee rate payers. While no one suggests that this is CGC's aim, it is clearly the outcome if the Consumer Advocate is required to put on its cost of capital witness before the start of the regular Hearing and without sufficient time to review Dr. Morin's testimony and prepare for cross examination.

Ms. Brundige and I have worked together to resolve most of the discovery and procedural issues in this Docket as they arose. This includes informally allowing CGC a full three extra weeks to provide many responses to the discovery originally due on February 5<sup>th</sup>, which significantly truncating the time the Consumer Advocate's witnesses have had to fully prepare their testimony. However, the Consumer Advocate cannot agree to all aspects of the request in Ms. Brundige's March 1 letter and we have been unable to work out an acceptable alternative solution. Given that time is relatively short before the Hearing in this Docket, perhaps it would be appropriate for counsel for all parties to meet with you as Hearing Officer, either in person or by phone, to resolve the issues raised by the request made in Ms. Brundige's letter. We appreciate your attention to this matter.

Sincerely,



C. Scott Jackson  
Senior Counsel

cc: Parties of Record